



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 21, 1996

Mr. Richard S. Rafes  
Vice President for Legal Affairs  
and General Counsel  
University of North Texas  
P.O. Box 13426  
Denton, Texas 76203-6426

OR96-1897

Dear Mr. Rafes:

You ask this office to reconsider our decision in Open Records Letter No. 95-863 (1995). Your request for reconsideration was assigned ID# 35787.

The University of North Texas (the "university") received a request for information from a student at the university. Among other things, the requestor seeks copies of her examinations.<sup>1</sup> In Open Records Letter No. 95-863 (1995), we ruled that the university was required to provide all of the requested information to the requestor. You believe section 552.122 of the Government Code authorizes the university to withhold the examination questions as this office ruled in Open Records Letter No. 95-755 (1995) regarding a similar request to the university. We agree that the university may withhold the test questions under section 552.122.

Section 552.122(a) of the Government Code authorizes, but does not require, a governmental body to withhold from required public disclosure a "test item developed by an educational institution that is funded wholly or in part by state revenue." This office has defined the term "test item" as "any standard means by which an individual's . . . knowledge or ability in a particular area is evaluated." Open Records Decision No. 626 (1994) at 6.

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<sup>1</sup>Because you do not contest the release of any other information the requestor seeks, we assume the university has released or will release the information to the requestor.

The legislature's purpose for enacting the statutory predecessor to section 552.122 was to codify existing open records decisions concluding that a governmental body authorized to conduct examinations was entitled to keep the examination questions confidential, particularly where the governmental body would use the questions on subsequent examinations. Open Records Decision Nos. 626 (1994) at 5, 543 (1990) at 3. Thus, we do not believe that the university's policy of allowing a student to view examination questions after taking the exam waives the university's ability to raise section 552.122 in response to a request for a copy of the examination questions. As you explain that the university reuses many of the test questions verbatim or with slight variations, you may withhold the examination questions under section 552.122. Open Records Letter No. 95-863 (1995) is overruled to the extent it concluded otherwise.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Loretta DeHay", with a stylized, cursive script.

Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/rho

Ref.: ID# 35787

cc: Ms. Lori Lover  
7429 Kingwood Circle  
Fort Worth, Texas 76133